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IN THE

Supreme Court of the United States

No. 25 October Term, 1934

UNITED STATES OF AMERICA, APPELLANT

vs.

JACOB TROY

On Appeal from the District Court of the United States for the Middle District of Pennsylvania.

BRIEF FILED ON BEHALF OF JACOB TROY, APPELLEE

JOSEPH F. GUNSTER,
A. M. LUCKS,
R. L. LEVY,
Attorneys for Appellee.

Scranton Life Bldg.,
Scranton, Pa.

Murrelle Printing Company, Law Printers, Sayre, Pa.

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ARGUMENT

I.

The sole question advanced by the Government in its brief is addressed to the proposition that the trial court in construing Section 146c of the Revenue Act of 1928 was bound to take into consideration Section 701b of the same act; that the trial court erred in construing sub-section (c) as being "exclusive" instead of "inclusive." If the trial court in his construction of Section 146c was not controlled by Section 701b of the act, then apparently it is conceded that the order quashing the indictment was correct.

It but requires a reading of Section 701b to see that this section has no application whatsoever to the proper construction of Section 146c.

Section 701b provides "the terms 'includes' and 'including' when used in a definition contained in this act shall not be deemed to exclude other things otherwise within the meaning of the term defined."

In construing this section and applying it to Section 146c the first question which presents itself is this:

First. Is the word "includes" used in a definition when it appears in Section 146c?

Second. Does the construction placed upon Section 146c by the trial judge "exclude other things otherwise within the meaning of the term defined?"

The answer to both these queries would appear to be in the negative.

Nowhere in Section 146 is there a definition of the term "person." Section 146c is a limitation placed upon the persons falling within the meaning of the Section, in that Section c includes officers or employees who while so acting are under a duty to perform the specific act done, and impliedly it excludes from the term "person" those officers who perform an act which they are not under duty to perform.

The term "person" requires no definition by Act of Congress. The act as enacted in Section 146 a and b refers to any person. Section C has the effect of excluding from prosecution persons of a designated class; it has the effect of removing a certain class of persons from the operation of the statute.

If Section 146c is not a definition, it necessarily follows that Section 701 has no application to the construction of 146c.

II.

Section 701 does not say "It shall not be deemed to exclude other persons and things otherwise within the meaning of the term defined" but it is limited by its terms to the word "things." In order to sustain the argument of the Government it is necessary to say the word "things" embraces within its meaning the term "person." We need but point out that this is a criminal case and that therefore, the Government is bound by the strictest possible construction of the Act of Congress.

The word "thing" has frequently been the subject of legal definition. It has been uniformly held "in common parlance it may intend all matters of substance in contradistinction to persons." 62 C. J. page 914.

Quoting from *Arnold's Estate,* 240 Pa. 261, at page 264, we find the following:

> "The controversy arises over the meaning of the phrase 'and other personal things,' as employed by the decedent in her will. Bouvier's Law Dictionary states that by the word 'things' is understood every object except man which may become an active subject of right; Anderson's Law Dictionary defines it as, 'subject-matter, substance, effect, any object that may be possessed;' Words & Phrases says, 'the

word "things" is of extensive signification, and in common parlance may intend all matters of substance in contradistinction to persons'; Webster's gives as a meaning, 'whatsoever may be possessed or owned'; and the Standard Dictionary, 'a subject of property and dominion.'"

III.

We believe the argument of the Government, however, must fall for a further reason. The Act of Congress in question must be construed as a whole. Every part thereof must be given due effect if possible.

Petition of Public National Bank of N. Y., 278 U. S. 101, quoting from opinion of Mr. Justice Sutherland, we find the following:

> "But we are not at liberty thus to deny effect to a part of a statute. No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that 'significance and effect shall, if possible, be accorded to every word.' As early as in Bacon's Abridgment, Sec. 2, it was said that, 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void or insignificant.' Washington Market Co. v. Hoffman, 101 U. S. 112, 115, 25 L. ed. 782, 783."

Adopting the construction urged by the Government, the statute must be read and construed as if Section 146c had never been written into the Act. Manifestly, Congress had a definite purpose in writing Section 146c into the Act of Congress, and the

Section must be given effect under the above rule of construction.

If we adopt the construction as applied by the learned trial court, that the Clause C was intended as a limitation upon the class of persons referred to in 146 a and b, no violence will be done to this cardinal rule of construction.

All of which is respectfully submitted.

A. M. LUCKS,
R. L. LEVY,
Attorneys for Appellee.

OPINION

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SUPREME COURT OF THE UNITED STATES.

No. 25.—October Term, 1934.

The United States of America, Appellant, *vs.* Jacob Troy.	On Appeal from the District Court of the United States for the Middle District of Pennsylvania.

[November 5, 1934.]

Mr. Justice McReynolds delivered the opinion of the Court.

This cause is here under the Criminal Appeals Act, March 2, 1907, c. 2564, 34 Stat. 1246 (U. S. C. A. Title 18, Sec. 682) and Sec. 238 Jud. Code (U. S. C. A. Title 28, Sec. 345). It necessitates consideration of certain provisions of the Revenue Act of 1928, c. 852, 45 Stat. 791.

Section 52 of that Act commands corporations to make tax returns sworn to by designated officers. Section 146 (a) declares that any person required to make return who wilfully fails so to do shall be guilty of a misdemeanor; 146 (b) that any person who wilfully fails to collect or truthfully account for and pay over any tax, and any person who wilfully attempts to evade or defeat any tax shall be guilty of felony; and 146 (c) that "the term 'person' as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs".

Sec. 701 provides: "When used in this Act the term 'person' means an individual, a trust or estate, a partnership, or a corporation"; also "the terms 'includes' and 'including' when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined".

Applicable portions of the Act are copied in the margin.*

*Revenue Act of 1928, c. 852, 45 Stat. 791, 808, 835, 878.

Sec. 52. Corporation Returns.

(a) Requirement.—Every corporation subject to taxation under this title shall make a return, stating specifically the items of its gross income and the deductions and credits allowed by this title. The return shall be sworn to by

An indictment, in the Middle District of Pennsylvania, charged appellee Troy with violating Sec. 146 (b) in that while president of the Troy Oil Company, Incorporated, he unlawfully, wilfully and knowingly attempted to defeat and evade a large part of the tax due from that corporation for 1929, by making a return for it which falsely stated the gross income. The indictment was challenged because "it fails to set forth that the defendant was under a duty to perform the act in respect of which the violation occurred and in the absence of this averment the indictment fails to set forth facts showing prima facie, a commission of the crime charged in the indictment". The trial judge sustained the objection and

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the president, vice president, or other principal officer and by the treasurer or assistant treasurer. . . .

Sec. 146. Penalties.

(a) Any person required under this title to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of the computation, assessment, or collection of any tax imposed by this title, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) Any person required under this title to collect, account for, and pay over any tax imposed by this title, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

(c) The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Sec. 701. Definitions.

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

. . . . . .

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

quashed the indictment. In his view it was necessary that there should be allegation and proof that appellee, as president of the corporation, was under a duty to make the return.

This was error; the questioned judgment must be reversed.

Section 146 (a) penalizes any person required to make a return, who wilfully fails so to do; paragraph (b) any person under duty to collect, account for, and pay over any tax, who wilfully fails, also any person (without regard to duty) who wilfully attempts to defeat the tax; and paragraph (c) declares that the term person as used in the section shall include an officer under duty to perform etc.

Considering these paragraphs along with the definitions of Sec. 701, it seems sufficiently clear Congress did not intend that paragraph (c) should exclude from paragraph (b) one who actually attempted to defeat. If the charge against appellee had been failure to make return, or pay over the tax for the corporation it might have been necessary to allege and show some duty in respect thereto; but when charged with wilful effort to defeat the tax by presenting a false return no allegation of duty to make the return was necessary. The alleged act sufficiently indicated appellee's criminal intent. Certainly we can find no legislative purpose to exempt from punishment one who actively endeavors to defeat a tax. And because some officers are said to be included in the term "person", all other individuals are not necessarily excluded.

Thus construed, all parts of the statute may have effect, and the manifest purpose of Congress will not be obstructed.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.